Gratiaen J.: "To my mind it would make a mockery of the undivided family system if this temporary reduction of the coparcenary unit to a single individual were to convert what was previously joint property belonging to an undivided family into the separate property of the surviving coparcener." To this it may be added that it would not appear reasonable to impart to the legislature the intention to discriminate, so long as the family itself subsists, between property in the hands of a single coparcener and that in the hands of two or more coparceners. It was urged that already the difference is there since a single coparcener can alienate the property in a manner not open to one of several coparceners. The extent to which he can alienate so as to bind a subsequently adopted son was a matter of much debate. But it appears to their Lordships to be an irrelevant consideration. Let it be assumed that his power of alienation is unassailable: that means no more than that he has in the circumstances the power to alienate joint family property. That is what it is until he alienates it, and, if he does not alienate it, that is what it remains. The fatal flaw in the argument of the appellant appeared to be that, having labelled the surviving coparcener "owner," he then attributed to his ownership such a congeries of rights that the property could no longer be called "joint family property." The family, a body fluctuating in numbers and comprised of male and female members, may equally well be said to be owners of the property, but owners whose ownership is qualified by the powers of the coparceners. There is in fact nothing to be gained by the use of the word "owner" in this connexion. It is only by analysing the nature of the rights of the members of the undivided family, both those in being and those yet to be born, that it can be determined whether the family property can properly be described as "joint property" of the undivided family. Judging by that test their Lordships have no doubt that the Supreme Court came to the right conclusion.

Had their Lordships taken a different view from that of the Supreme Court it might have been necessary to review some at least of the large number of cases cited at the Bar, from which chosen passages appeared to favour the contentions of the appellant. But, as was said in the case of the previous appeal, the matters upon which the parties and their expert witnesses were agreed were of far greater significance than those upon which they differed, and their Lordships doubt whether even if the appellant's evidence stood alone, they could have come to any different conclusion as to the meaning and scope of the words "joint property of that Hindu undivided family" as used in the 1938 Ordinance.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellant will pay the costs of the appeal.

Appeal dismissed.

STANTON NELSON & CO. LTD. v. S. E. MIZRAHIE; C. K. TAYLOR, 3rd Party

[O. C. J. (Buttrose J.) July 19, 1957]

[Singapore — Suit No. 1616 of 1955]

Contract — Gaming and wagering contract — Rubber Dealers Ordinance (Cap. 199) s. 3 — Forward contracts — Civil Law Ordinance (Cap. 24), s. 6.

The plaintiffs in this case were rubber brokers and members of the Singapore Chamber of Commerce Rubber Association in the class of brokers. They claimed damages for breach of several contracts in writing for purchase and sale of rubber or in the alternative the balance of expenses incurred by them and agreed, alternatively reasonable remuneration earned by them in respect of services rendered as the defendant's brokers.

All the contracts in this case subject to a few exceptions were forward F.O.B. contracts involving delivery at the time they were made.

A number of defences were raised on the pleadings but the only real issue of substance which emerged at the trial was that of illegality. This defence was based on two grounds: (i) that the contracts were illegal and void because the defendant was not licensed under the Rubber Dealers Ordinance to purchase rubber and that neither the plaintiffs nor the defendant complied with the requirements of section 13 or 14 of the Ordinance in respect of them; (ii) that the contracts were void as gaming and wagering contracts within the meaning of section 6 of the Civil Law Ordinance.

Held: the words "purchase rubber" as used in section 3 of the Rubber Dealers Ordinance refer to present purchases of the commodity and not to forward or executory contracts to purchase which do not invoke delivery at the time they were made and therefore the defendant not being a holder of the licence under the Ordinance did not render the contracts illegal.

Held further: it is the essence of a wagering contract that one party under it is to win and the other to lose, upon a future event which at the time of the contract, is of an uncertain nature. If either of the parties may win but cannot lose or may lose but cannot win, it is not a wagering contract.

Held also: where a dealer is prepared to deliver or take delivery, as the case may be, and he has not entered into a secret understanding that he will in no case do so, the contract is no wager.

Universal Stock Exchange v. Strachan(6) followed. **In re Gieve**(7) and **Robinson v. Mollett**(8) distinguished.

Cases referred to:—

(1) *Syn Thong & Co. v. Tong Joo (Hoa) & Co.* (1929) S.S.L.R. 39.

(2) *Baker v. Sharma* K.L. — Civil Suit No. 164 of 1936 — unreported. 3 M.C. 15.

(3) *Ng Kean Tek v. Kam Hock Lye* (1950) M.L.J. 279.

(4) *Lambert v. Rowe* (1914) 1 K.B. 38.

(5) *Mahmoud and Ispahani* (1921) 2 K.B. 716.

(6) *Universal Stock Exchange v. Strachan* (1896) A.C. 166.

(7) *In re Gieve* (1899) 68 L.J. Q.B. 509.

(8) *Robinson v. Mollett* L.R. 7 H.L. 802.

(9) *Woodward & Anor. v. Wolfe* (1936) 3 All E.R. 529.

(10) *Lloyd v. Grace, Smith & Co.* (1912) A.C. 716.

(11) *Weddle Beck & Co. v. Hackett* (1929) 1 K.B. 321.

ACTION.

C. H. Withers-Payne for the plaintiffs.

S. H. D. Elias for the defendant.

G. S. Hill for the 3rd Party.

The facts and argument appear sufficiently from the judgment.

Cur. Adv. Vult.

Buttrose J. : — In this action the plaintiffs, who are rubber brokers and members of the Singapore Chamber of Commerce Rubber Association in the class of brokers, claim damages for breach of several contracts in writing for the purchase and sale of rubber or in the alternative the balance of expenses incurred by them and agreed, alternatively reasonable remuneration earned by them in respect of services rendered as the defendant's brokers.

At all material times, namely, between July and November 1955 Mr. Harcourt-Poole, who was an alternate director of the plaintiff company was in charge of the business during the absence on leave of Mr. Purser, and Mr. O. K. Taylor who joined the plaintiffs in January 1955 was employed as an assistant broker on a salary and commission basis.

The defendant at or about the commencement of his rubber transactions with the plaintiffs was apparently dealing in second hand cars but in 1949 when he was living in Sourabaya he acquired a half interest in Khaliffa & Co. a firm of importers, exporters and general merchants, and towards the middle of 1950 the defendant, through that firm, became engaged in the export of rubber to Singapore.

Now the evidence was that the defendant and Taylor had first become acquainted some years before in Sourabaya the precise date is not material. It is clear however that in 1950 Taylor was associated with the defendant in connection with his rubber transactions which were mainly concerned with the export of rubber to Singapore and it was in respect of the first shipment that Taylor accompanied the defendant and his partner in the transaction to Singapore to assist them in disposing of the rubber by finding buyers. Taylor left Indonesia in 1951 and eventually arrived in Singapore in 1952 where he renewed his acquaintance with the defendant who had also by that time moved to Singapore.

They became friendly and I think that it was because of this and of their previous association that the defendant decided to venture into the rubber market. The evidence, in my view, has established that shortly before the first of the transactions in question in this action was entered into Taylor suggested to the defendant that he should deal in rubber as he — Taylor — was now working for the plaintiffs as a rubber broker and that he informed the defendant that no physical rubber was involved merely paper rubber — that you bought at a price and sold at a price — and only differences were dealt in and paid or received as at the 15th of each month.

The question of Taylor having an interest in any business done by the defendant was also, I think, discussed but the precise nature or extent of that interest it is not necessary for me to decide for the purposes of these proceedings nor is it, in my view, open to the defendant to adduce any evidence that he signed any of the contracts in question either in whole or in part as Taylor's agent.

As to when transactions were to begin it was arranged that the defendant was to telephone Taylor if he did not hear from him and on the 17th of August 1955 the defendant did telephone Taylor at the plaintiffs' office and the first transaction in question was entered into.

The evidence was that Mr. Harcourt-Poole knew of the defendant and had met him before that date and approved of his being taken on as a customer in the normal way. He did not require a margin because, he said, he considered the defendant was a man of substance.

The procedure followed in making these contracts was clearly set out in the evidence of Mr. Harcourt-Poole and Mr. Taylor and it is unnecessary for me to restate it.

There have been produced before me the sale and purchase contracts in connection with all the transactions referred to in the pleadings and in which the defendant was interested together with confirmation slips signed by the defendant in respect thereof with the exception of confirmation slips relating to contract No. 21634 and those contracts which resulted in the sale of rubber on closing down referred to in paragraph 5 of the statement of claim.

At the close of the first monthly period of business viz., 15th September, 1955, the plaintiff sent the defendant their usual statement of account as they do in the case of all their customers, showing that he had made a profit of $7,350 after deducting their brokerage commission shown in the account of $1,820 and they enclosed their cheque dated the 18th of September 1955 covering the amount which was accepted by the defendant.

Subsequent transactions took place and as a result the defendant's position, at the close of business on the 4th of October, 1955, was that he was 275 tons long in other words he had made purchases to that extent

against which he had no sales — and the market was falling. The plaintiffs, not unnaturally, became concerned at the position and Mr. Harcourt-Poole had a conversation on or about the 6th of October with the defendant the upshot of which was that the defendant agreed to try and obtain a bank guarantee for $100,000. This however was not forthcoming for reasons which the defendant advanced in his evidence. I am satisfied that both Mr. Harcourt-Poole and Mr. Taylor made attempts to contact the defendant after that date without any tangible result and I am bound to say on the defendant's own evidence I find his attitude difficult to understand and I am unable to arrive at any conclusion as to what he thought he was doing at that stage.

As settlement day was approaching and the plaintiffs had been unable to contact the defendant the position had become serious and they wrote to the defendant on the 10th of October 1955 enclosing their account covering his closed position as at that date which showed a sum of $119,840 due to the plaintiffs representing his losses and requesting a cheque in settlement.

With regard to his open position of 275 tons the plaintiffs requested a marginal deposit or bank guarantee to cover the present loss.

In reply they received a letter dated 12th October from the defendant's solicitors stating, *inter alia,* that the defendant repudiated all the transactions on the ground that they were illegal because of non-compliance with the provisions of the Rubber Dealers Ordinance (Chapter 199) and further that they were void as wagering contracts.

In view of this letter the plaintiffs had no alternative but, in mitigation of their damage, to sell the position out which they did on the 13th of October by making sale contracts on behalf of the defendant in order to dispose of his long position of 275 tons at the best market price available but as the market had dropped at a substantial loss to the defendant.

On the 19th of October 1955 the defendant's solicitors returned the plaintiffs' cheque for $7,350 which the defendant had not up to then negotiated for the reason, as I understood it, that he did not want to put it through his Bankers as they would become aware he was gambling in rubber.

It is in respect of the defendant's closed position account as at the 10th of October and the losses resulting from the sale contracts relating to the 275 tons outstanding on repudiation that these present proceedings have been brought.

The plaintiffs contend that as brokers they entered into these series of guarantee contracts with the defendant a non-member of the Association and as a result they are in a position to sue either as agents of an undisclosed principal in their own name or in their true position as brokers for indemnity.

A number of defences were raised on the pleadings but the only real issue of substance, in my view, which emerged at the trial was that of illegality.

This defence was based on two grounds: the first was that the contracts were illegal and void because the defendant was not licensed under the Rubber Dealers Ordinance to purchase rubber and that neither the plaintiffs nor the defendant complied with any of the requirements of section 13 or 14 of the Ordinance in respect of them. The other was that the contracts were void as gaming and wagering contracts within the meaning of section 6 of the Civil Law Ordinance (Chapter 24).

With regard to the first ground, section 3 of the Rubber Dealers Ordinance provides that no person shall purchase, treat or store rubber unless he shall have been duly licensed in that behalf by a licensing officer.

The question as to what is the meaning which the words "purchase rubber" bear in that section was fully considered in the case of *Syn Thong & Co. v. Tong Joo (Hoa) & Co.*[1] which concerned certain forward contracts for the sale and purchase of rubber and which were expressed to be subject to the printed rules and bye-laws of the Singapore Chamber of Commerce Rubber Association. It was held that the fact that the plaintiffs in that case were not the holders of a licence to purchase rubber under section 3 of the Ordinance did not render the contracts illegal as the words "purchase rubber" in that section do not refer to a forward contract and that a licence under the section does not become necessary until delivery is taken.

Now all the contracts in the present case subject to a few exceptions were forward F.O.B. contracts and whether forward or not in the trade sense of the term they were all executory. There were none involving delivery at the time they were made. Indeed Mr. Holiday's evidence was that buyer and seller under these forward contracts do not have physical possession of the rubber and are not likely to have.

The Rubber Dealers Ordinance, in my opinion, never meant to prohibit this type of contract.

In *Syn Thong & Co. v. Tong Joo*[1] Stevens J. after referring to various sections of the Ordinance with a view to ascertaining the true meaning to be attached to the expression "purchase rubber" goes on to say at page 44, "Now it is perfectly clear that the Ordinance is concerned with the specific commodity as

defined in section 2 and that its object is to enable the Government to keep in touch with all dealings in that commodity by compelling dealers to store their rubber only in specially licensed premises and to furnish information as to the origin and destination of every lot of rubber which forms the subject of a sale."

I agree with these observations and in the view I take the words "purchase rubber" as used in section 3 refer to present purchases of the commodity and not to forward or executory contracts to purchase which do not involve delivery at the time they were made.

The decision in *Syn Thong & Co. v. Tong Joo*[1] was approved by the Supreme Court of the Federation in *Baker v. Sharma*[2] (Civil Suit No. 164 of 1936) unreported, where Thomas C.J. in dealing with section 5 of the Federation Rubber Supervision Enactment (Chapter 88) which corresponds in almost identical terms with section 3 of our Ordinance said "As I understand the Enactment it is intended to deal with present sales and not transactions such as have been disclosed in the present case", i.e. forward contracts for the purchase of rubber. The learned Chief Justice went on to say that he agreed with the decision of Stevens J. The case went to the Federation Court of Appeal where Cussen J., in delivering the oral judgment of the Court said at page 7 "the second ground of appeal is that under the Rubber Supervision Enactment you cannot purchase rubber unless you are licensed to do so. Now owing to the ruling of this Court yesterday it is not necessary for me to deal with this argument . . . " The judgment unfortunately is silent as to what that ruling was or as to the reason for it.

But it was argued before me that this case was not binding on the Court and that Thomas C.J.'s reference to *Syn Thong & Co. v. Tong Joo*[1] must be treated as *obiter*. I am unable to agree for the Court is, in my view, bound to take notice of an illegality such as this whether pleaded or not. In any event, it seems to me clear that both in the Court below and in the Court of Appeal it was considered that there was no substance in the point raised. There are, in my opinion, many points of similarity between that case and the present.

The case of *Ng Kean Tek v. Kam Hock Lye*[3] while not in so many words approving the decision in *Syn Thong & Co. v. Tong Joo*[1] certainly does not dissent from it and accepts it. Jobling J. at page 280 said "that case" — referring to *Syn Thong & Co. v. Tong Joo*[1] — "laid down that a licence under the Rubber Dealers Ordinance for the purchase of rubber is necessary when the purchaser takes delivery but not before. It is clear then that the contract (which in the case before the learned Judge was for the delivery of rubber) was not illegal when entered into . . . "

Now it was argued on behalf of the defendant that as there was no interpretation of the word purchase in the Ordinance the ordinary connotation of the word should apply and in support of that contention reliance was placed on *Lambert v. Rowe*[4] and *Mahmoud and Ispahani*[5]. The former case concerned a criminal prosecution under section 13 of the Markets and Fairs Clauses Act, 1847, which made it a penal offence to sell tollable goods within the prescribed limits of a market town elsewhere than in the seller's dwelling house or shop. It was held that the word "sell" in that section is to be understood in a popular and not its strict legal sense. It was pointed out by Scrutton J. that whereas generally people are assumed to know the law the Act had been passed upon the supposition that they did not and that when the legislature is dealing with farmers and tolls in market towns it forbids them to sell in a sense that they will understand as when an agreement for a sale is spoken of as a sale. He went on to say that the justices who correctly applied the ordinary law of the land applied the wrong law and that instead of reading the word "sale" in the sense which it bears in the Sale of Goods Act they should have read it in the popular sense that it bears in the mind of farmers.

I do not consider that in the case before me entry into these forward or executory contracts would render the buyer liable to prosecution under section 17 of the Rubber Dealers Ordinance.

The case of *Mahmoud and Ispahani*[5] concerned the effect of an Order made under the Defence of the Realm Regulations which provided, *inter alia*, as follows :—

> Until further notice a person shall not either on his own behalf or on behalf of any other person buy or sell or otherwise deal in, or offer or attempt to buy or sell or otherwise deal in, any of the articles specified in the schedule hereto, whether situated within or without the United Kingdom, except under and in accordance with the terms of a licence issued by or under the authority of the Food Controller.

It was held in that case that as the defendant, who had refused to accept delivery of the linseed oil (one of the articles specified in the schedule to the Order), had no licence the contract of sale was prohibited by the Order and was therefore illegal and as

the prohibition was in the public interest no claim could be made under the contract.

The wording of the Order is entirely different and much wider in its scope than that used in section 3 of the Rubber Dealers Ordinance.

In both these cases the statutes in question, clearly, so it seems to me, meant to prohibit the contracts.

It is to be noted that *Mahmoud and Ispahani*[5] was cited before Stevens J. in *Syn Thong & Co. v. Tong Joo*[1].

In the case before me I have come to the conclusion that the Rubber Dealers Ordinance does not, and was never intended to, apply to transactions such as are the subject matter of the present proceedings.

I agree with the decisions in *Syn Thong & Co. v. Tong Joo*[1] and *Baker v. Sharma*[2] on this point.

I turn now to the second ground, namely, that the contracts were gaming and wagering contracts within the meaning of section 6 of the Civil Law Ordinance (Chapter 24). A to what is a gaming and wagering contract was clearly stated by Cave J. in his summing up to the jury in the case of *Universal Stock Exchange v. Strachan*[6] and it is unnecessary for me to attempt to re-define it.

Now the transactions between the parties were carried out in the main as the result of telephonic communications between the defendant and Taylor, originated in some instances by Taylor and in others by the defendant and on some occasions by Mr. Harcourt-Poole dealt with the defendant. In connection with those contracts entered into on the 26th of September I think it is possible that Taylor, anticipating a profit, entered into them without prior consultation and they were subsequently confirmed and ratified by the defendant.

There have been produced before me in respect of every transaction which is the subject of this claim the contracts made by the plaintiffs in the market under which they purchased from or sold to other persons the exact amount which the defendant was buying or selling. The plaintiffs went into the market and the transactions were carried out and the contracts entered into in the manner and in conformity with the procedure outlined by both Mr. Harcourt-Poole and Mr. Taylor in their evidence to which it is unnecessary I think for me to refer.

The plaintiffs always made their purchase or sale in the market before sending on to the defendant the Advice of Purchase or Advice of Sale Notes with the brokerage of half cent per lb. added and in every case, subject to the exceptions to which I have referred, the defendant confirmed them in writing.

I am satisfied that as between the defendant and Taylor the arrangement was that the former should not be obliged to take up, and was not expected to take up, any rubber. It was a gambling transaction in so far as the defendant was concerned and recognised by both Taylor and the defendant as such.

I am equally satisfied that the plaintiff, in the person of Mr. Harcourt-Poole who at the time was in charge of the company's business had no knowledge of this arrangement.

On behalf of the defendant it was argued that here there were contracts made by the defendant directly with the plaintiffs of purchase and sale as principals and as there was an express understanding that there was to be no question of taking delivery of the rubber on either side but only a payment of difference in price the claim was one in respect of gaming and wagering contracts and consequently unenforceable in law. It was submitted that in no sense were there real transactions and there was no intention of doing any genuine business in the purchase and sale of rubber at all; the only object in mind was speculation in differences.

Counsel for the defendant relied on *In re Gieve*[7] and *Robinson v. Mollett*[8] Both these cases are, in my view, distinguishable.

The decision in *Gieve's case*[7] turned on the true construction to be placed on the particular contract note in question which in so far as it is material ran as follows "I beg to advise having sold to you "certain stock at a certain price and so much "cover". If that were all as Lindley M.R. pointed out at page 512 it would be an ordinary sold note and there would be nothing on the face of it to shew that it did not mean what it said but the addition of the words "plus half if stock is taken up" shewed plainly that the parties did not contemplate that the stock would be taken up and consequently that the agreement on the face of it was a gaming transaction. That is not the position here. It is noteworthy that *Gieve's case*[7] was cited before Stevens J. in *Syn Thong & Co. v. Tong Joo*[1] where in connection with forward contracts for the sale and purchase of rubber it was held that where a dealer is prepared to deliver or take delivery as the case may be and he has not entered into a secret understanding that he will in no case do so the contract is no wager.

Robinson v. Mollett[8] was a case of a broker selling his own tallow — the broker in fact becoming the seller to his client instead of the agent to buy

for him. In other words they were principals in the transaction. But the plaintiffs in the present case did in fact, in my opinion, act in every transaction as brokers. They did not sell their own rubber to the defendant — they sold rubber to and purchased rubber from corresponding principals and they made genuine contracts in the market binding them in respect of that which the defendant was buying or selling. As was pointed out by Hilbery J. in *Woodward and Another v. Wolfe*[9] the fact that afterwards because the rules of the association and the market bound them so to do, they sent a form of contract as between plaintiffs and defendant as direct contractors obscures and falsifies the true position.

The reason for the brokers, the plaintiffs in the present case, appearing in the contracts as principals is in accordance with Bye-law 20(a) of the Singapore Chamber of Commerce Rubber Association Bye-laws which indicates that the broker is acting as a broker although deemed to be a principal. This was explained in the judgment of Thomas C.J. in *Baker v. Sharma*[2] to which I have already referred and which was a case of a solicitor deciding to speculate in the forward purchase of rubber. It was held in that case that the contract was not a wager because the plaintiff, the broker, did not act as a principal but merely as agent or broker for his client. I am unable to distinguish that case from the present.

It is also to be noted that the contracts in this case in express terms add a charge for brokerage, a charge altogether at variance with the plaintiffs being in reality principals in an ordinary sale and purchase contract with the defendant.

It is of the essence of a wagering contract that one party under it is to win and the other to lose, upon a future event which at the time of the contract, is of an uncertain nature. If either of the parties may win but cannot lose or may lose but cannot win, it is not a wagering contract.

If, as is alleged here, the plaintiffs were speculating the only result was that they would neither gain nor lose but simply receive their usual brokerage by way of remuneration.

It seems to me that if a broker is employed merely to buy and sell upon the market the contract between the principal and the broker is not gaming or wagering and the real test, in my opinion, as to the enforceability of the present contracts by the plaintiffs is, whatever the form of the contract, did they act as brokers entering into specific contracts for the defendant?

In my opinion they did and the contracts are therefore not gaming and wagering contracts and are enforceable.

The plaintiffs entered into contracts on the market on behalf of the defendant which I am satisfied on the evidence bound him and they have I am satisfied, on the respective settlement days, had to discharge their obligations under them.

It was further argued however, as I understood it, that, on the principle enunciated in *Lloyd v. Grace, Smith & Co.*[10] namely that a principal is liable for the fraud of his agent acting within the scope of his authority, the plaintiffs were affected by the knowledge of their employee or agent Taylor whom they held out as having ostensible authority and accordingly bound the plaintiffs if acting within the scope of that authority.

Taylor had authority on behalf of the plaintiffs to make contracts with the defendant but on the assumption that he was entering into gambling contracts with the defendant he was, so it seems to me, clearly acting outside the scope of his authority. But the real question here, as was illustrated in *Weddle Beck & Co. v. Hackett*[11] is was the plaintiff company speculating and for the reasons which I have already stated that question must, in my view, be answered in the negative.

I come now to Contract No. 21634 in respect of which the defendant failed to sign and return the confirmation slip. According to the defendant's evidence Taylor telephoned him in the afternoon of the 3rd of October to say that he had bought 25 tons on his own account, although apparently in the name of the defendant, through the plaintiffs and requested the defendant to sign the contract but he refused to do so.

I propose to deal with the matter on the assumption that that was in fact the position.

The plaintiffs contend that they *bona fide* made a contract with the defendant through Taylor and accordingly on the 3rd of October sent their Usual Advice of Purchase Note to the defendant in his name. The evidence was that on the same day the plaintiffs had made three previous purchase contracts on behalf of the defendant and all four were despatched together to the defendant who while signing and returning confirmation slips in respect of the first three of them did not do so in respect of the final contract No. 21634.

The fact that the defendant did not sign this confirmation slip does not invalidate the contract. The contract was made between the seller of the rubber

and the plaintiffs who could sign it as brokers for the defendant and such signature is sufficient for the purposes of the Civil Law Ordinance (Chapter 24). Quite apart from this the plaintiffs have in any event a full right of indemnity against the defendant in respect thereof as brokers.

On receipt of the Advice of Purchase Note the defendant did not reject the contract but merely placed it on one side and said nothing and it was not until the receipt by the plaintiffs of the defendant's solicitors' letter of repudiation dated 12th October that the plaintiffs for the first time became aware of the stand taken by the defendant with regard to this particular contract.

I agree with the submission advanced by Counsel for the plaintiffs that there was a legal obligation imposed on the defendant to reject the contract immediately and he had no right to hold on to it in the face of a falling market and say or do nothing about it until the 12th of October. There can, in my view, be no doubt whatever that the loss in respect of this contract between the 4th and 12th October was entirely due to the defendant's own conduct. It is to be noted that on the 6th of October when he had a conversation with Mr. Harcourt-Poole as to his long position of 275 tons the defendant made no mention of it.

The plaintiffs are, in my opinion, entitled to claim in respect of this contract.

I am also satisfied on the evidence that the closing out sales in respect of the defendant's 275 tons were effected by the plaintiffs at the best price they were able to obtain in the circumstances and the reason why forward contracts for November shipment were entered into was explained by Mr. Harcourt-Poole in his evidence.

There were various other matters referred to in argument by Counsel for the defendant and while I find myself unable to attach any substance to them I think it desirable that I should deal very briefly with some of them.

First of all with regard to the passing of tenders it was urged upon me that it was quite clear from a perusal of Ex. 12, that the plaintiffs were acting with all the rights and responsibilities of principals and had themselves assumed the right to dispose of the property under the contracts. Now it is only in relation to certain of these contracts that registered tenders enter if at all. The evidence established that these registered tenders could only pass between members — they could not be passed to the defendant a non-member. But there was nothing to prevent a registered tender being held by the plaintiffs on behalf of the defendant and it is I think clear that every registered tender does in fact deal with physical rubber in that on settlement day the first seller has to put the rubber on board and the last buyer must give shipping instructions with regard to that rubber. There was, of course, in this case no actual tender — in the sense of offering physical goods — or delivery of physical rubber to the defendant.

The mere fact however that the plaintiffs dealt with these registered tenders in the only way they could deal with them does not, in my view, constitute them principals in the transactions concerned nor is there anything which they did with regard to them in any way inconsistent with their position as brokers acting on behalf of the defendant.

Considerable importance was attached by Counsel for the defendant in this connection to the application of Bye-Law 68 of the Singapore Chamber of Commerce Rubber Association Bye-Laws, dealing with a broker's liabilities in respect of these registered tenders, read in conjunction with clause 27 of the F.O.B. Conditions of the Association.

It will be sufficient however if I say that in view of the very clear evidence given by Mr. Holiday on the subject, which I have no hesitation in accepting, I am quite satisfied that Bye-Law 68 does not apply.

With regard generally to the application of the Rules, Bye-Laws and F.O.B. Conditions of the Singapore Chamber of Commerce Rubber Association it appeared that as the defendant was not a member of the Association many of them would not apply to him. The question of set-off, for example, which is dealt with in Bye-Law 10 expressly refers to set-off between members and associate members not to non-members. It was contended on behalf of the plaintiffs that in so far as these Rules, Bye-Laws and F.O.B. Conditions did apply the contracts were subject to them and they had been complied with. But in any event, on the evidence before me, I am not prepared to say that even as between members themselves non-compliance therewith rendered the contracts illegal or in any way affected their validity let alone as regards a third party non-member.

It was also contended on behalf of the defendant that there was no privity of contract between the defendant and the other parties to the contracts. The

position, as I understood it, was that the plaintiffs as brokers in each case effected the contract with a disclosed principal as agent for an undisclosed principal. The defendant, in effect, sold to the plaintiffs who in turn sold to a 3rd person establishing, so it seems to me, complete privity in law between two principals.

I am satisfied that the defendant well knew that the plaintiffs were acting as brokers on his behalf. At the commencement of the transactions in question the defendant used to visit the brokers trading room in order to sign the confirmation slips and on one occasion had to wait there for the arrival of Taylor who was late and in my opinion he was fully aware of what was going on, as to how the contracts were made and the procedure generally. In every case the Advice of Purchase or Sale Notes with the brokerage added were sent to him by the plaintiffs and in respect of the first monthly period of trading the brokerage was in fact paid by the defendant. I have no doubt that he recognised, approved and accepted the fact that the plaintiffs were being employed on his behalf to act as brokers in these transactions. The defendant, in my opinion, took a keen interest in his rubber dealings and followed the trend of the market closely. He was obtaining advice not only from the plaintiffs but through Tai Joo one of the biggest rubber dealers in Singapore and he was granted the use of a room in Hoe Tai & Co.'s office in which to transact his rubber dealings and through whose firm he was also obtaining advice and information. The defendant was, in my opinion, fully aware that he could, and he did in fact, give instructions to the plaintiffs with regard to his rubber transactions and that he was free to buy or sell as he wished.

In conclusion I think I should add that in the light of Mr. Holiday's evidence, which I accept, and as a result of my own examination of the voluminous documents which have been produced before me as a result of the very full discovery made by the plaintiffs in this case I am satisfied that they have throughout acted as brokers in the ordinary course of their business as such.

The defence has, in my view, failed on all points and there must be judgment for the plaintiffs for the amount claimed with interest thereon at the rate of 6 per centum per annum from the 7th of November, 1955, until the date hereof, and costs.

Judgment for the plaintiffs.

Solicitors: *Drew & Napier; Elias Bros.; Rodyk & Davidson*

BACHAN SINGH v. MELAH SINGH & ORS.

[A. C. J. (Smith J.) July 1, 1957]

[K.L. — Civil Revision No. 2 of 1955]

Costs — 1947 Rule No. 3 — Whether this rule applies to costs awarded in revision.

In this case there was an appeal from a ruling by the learned Senior Asst. Registrar who ruled that 1947 Rule No. 3 has no application to costs awarded on revision by the High Court of the proceedings of a subordinate Court. The question was whether the words "appeal or cross appeal from a decision of a lower Court" could be construed to include a revision under section 55 of the Courts Ordinance, 1948.

Held: 1947 Rule No. 3 has no application to proceedings in revision.

CIVIL REVISION.

Eugene Lye for the petitioner.

Lim Sun Hoe for the respondents.

Smith J. : — This appeal from a ruling by the learned Senior Assistant Registrar raises the question whether 1947 Rule No. 3 has any application to costs awarded on revision by the High Court of the proceedings of a subordinate Court. The question is whether the words "appeal or cross appeal from a decision of a lower Court" are, in this particular context, wide enough to include a revision under section 55 of the Courts Ordinance, 1948.

The point is that the effect of 1947 Rule No. 3 appears to be to limit in ordinary cases the amount of costs which the successful party will recover to a figure lower than that which he would previously have recovered and to that extent takes away something favourable which previously existed.

The words used are "appeal or cross appeal." These words appear to be particularising: a more general intention would be shewn by the single word "appeal".

Throughout our written law "appeal" and "revision" are treated entirely separately. No instance has been cited to me where they are treated as similar topics. The language appears to me to be unambiguous and I cannot see that to construe the words as excluding revision creates any absurdity.

I consider that 1947 Rule No. 3 has no application to proceedings in revision and accordingly dismiss the appeal.

Appeal dismissed.

Solicitors: *Eugene Lye & Hoh; Bannon & Bailey.*